IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.560 OF 1999

IN

ARBITRATION PETITION NO.233 OF 1995

IN

AWARD NO.45 OF 1995

AND

APPEAL NO.226 OF 2000

IN

ARBITRATION PETITION NO.53 OF 1994

IN

AWARD NO.211 OF 1993

AND

CROSS OBJECTIONS (LODG) NO.9 OF 1999

IN

APPEAL NO.560 OF 1999

Mcdermott International Inc. ... Appellant

vs.

Oil & Natural Gas Commission now
called as Oil & Natural Gas
Corporation Ltd. ... Respondent

Mr.F.E.Devitre with B.B.Saraf, Dinesh Chamboowala. i/b. Mustafa Motiwala, for Appellant.

Mr.D.R.Zaiwala with Ms.Snehal Paranjpe, Mohandas i/b. Little & Co., for Respondent.

CORAM: D. K. DESHMUKH &

J. H. BHATIA, JJ.

DATED: 9th October,2007

P.C.:-

1. Both these appeals are between the same parties and at least one question raised in both these appeals is common, the parties are also common, therefore, both the appeals can be conveniently disposed of by a common order. The appellant in both these appeals is an overseas contractor with whom the respondent-ONGC had entered into a contract for carrying out work at Bombay High. The disputes arose

between the parties. There was an arbitration clause and therefore, the disputes were referred to arbitrations. In the first arbitration Award was made by the learned Umpire on 25.1.1995. Certain claims made by the appellant-claimant were accepted. One claim with which this appeal is concerned, is the claim regarding surtax, that claim made by the Contractor appellant was awarded by the umpire. An arbitration petition was filed challenging the Award made by the Umpire which was arbitration petition no.233 of 1995 and the Award made by the learned Umpire is Award no.45 of 1995. That petition was decided by the order dated 4.9.1998. The learned Single Judge records in his order that challenge was raised to the several claims but only challenge to the Award made under claim no.9 was seriously pressed on behalf of O.N.G.C. which was the petitioner challenging the Award. The learned Single Judge by his judgment dated 4.9.1998 set aside the Award made by the learned Umpire on clause 9. Appeal no.560 of 1999 is directed against that order. In the second arbitration, the award was made by the arbitrators. The Award number is Award no.211 of 1993. By the

Award, several claims made by the claimant were awarded by the learned Arbitrator by their Award dated 30.9.1993. The learned Arbitrators by the Award also awarded the claim of the appellant in relation to surtax. The second claim awarded by the learned Arbitrator with which this appeal is concerned, is claim in relation to mobilisation and demobilisation of the equipments and the third claim awarded by the learned Arbitrator with which this appeal is concerned, is in relation to payment of interest on disputed amount. The arbitration petition challenging the Award made by the arbitrators was filed in this Court by O.N.G.C. which was registered as Arbitration petition no.53 of 1994. It was decided by the learned Single Judge of this Court by order dated 10.8.1999. So far as the claim of surtax is concerned, the learned Single Judge followed the judgment of the learned Single Judge in Arbitration petition no.233 of 1995. The learned Single Judge has agreed with the view taken in the judgment in arbitration petition no.233 of 1995 and has set aside the Award. The learned Single Judge has also set aside the Award of the Arbitrators in

relation to the mobilisation and demobilisation of the equipments. He also set aside the Award made by the learned Arbitrators in relation to the payment of interest. The judgment of the learned Single Judge in Arbitration petition no.53 of 2004 is challenged in the appeal no.226 of 2000.

2. Now taking up the question which is common in both the appeals viz. surtax for consideration. The surtax was admittedly payable by the appellant to the Government and admittedly, the amounts were deducted from the amount payable to the appellant by the respondent for payment of surtax to the Government. The amounts were deducted in the year 1987 but actual payment was made in the year 1990. The claim of the appellant was that under the terms of the contract, the contractor was entitled to receive payment in U.S. dollars by crediting the amount in the account of the contractor -appellant in a bank at New York. The respondent deducted the amounts payable to the contractor in dollars by adopting the exchange rate which was in force on the date of deduction. However, when the amount of tax

was actually paid in the year 1990, there was variation in the exchange rate. In other words, when the amount was actually paid lesser dollars were required for making payment of the tax liability, and therefore, according to the Contractor, the contractor was entitled to refund of the dollars. This claim has been rejected by the learned Single Judge relying on the judgment of the Supreme Court in the case of “P.V.Raghava Reddi and another vs. Commissioner of Income Tax, AIR 1962 Supreme Court 977”. The learned Single Judge has thus held that when the amount was deducted from the amounts payable to the contractor in the year 1987 credit was given in the account books of the respondent to the contractor it amounts to payment to the contractor, and therefore, the contractor is not entitled to the benefit of variation in the exchange rate. This finding is challenged by the appellant. It is submitted by the learned Counsel appearing for the appellant that as per the terms of the contract, the amounts for the work done by the contractor was payable by the respondent in foreign currency viz. Dollars and therefore, when the amount was deducted

by the respondent the deduction was also in that currency. According to the appellant, when the deduction was made in the year 1987, the respondent was under a duty to retain the amount in the same currency till the payment is made to the tax authorities. It is submitted that the judgment of the Supreme Court in the case of “P.V.Raghava Reddi and another vs. Commissioner of Income Tax” is not applicable in this case because that judgment turns on the terms of the contract between the parties in that case. On the other hand, on behalf of the respondent, relying on the provisions of the Foreign Exchange Regulation Act, it was contended that the amount which was deducted could not have been retained in foreign currency by the respondent. Then it was submitted that the account is maintained by the respondent in Indian Currency and therefore, the deduction was also made in Indian currency and the payment of tax was also made in Indian currency, therefore, there is no question of the appellant being entitled to any benefit of variation in the exchange rate.

3. Now if in the light of these rival submission the record of the case is perused, it becomes clear that it is clause 22 of the Contract which is relevant. It reads as under:-

> “22. Duties and Taxes
>
> Indian Custom duties, if any, levied upon fabricated structures, sub-assemblies and equipment and all components which are to be incorporated in the Works under the Contract and Constructional Plant and Equipment (provided that the same shall be exported back from India as early as possible after completion of the Works of Site) shall be borne by the Company.
>
> The Contractor shall bear all taxes including but not limited to Indian Corporate taxes levied or imposed on the Contractor under the Contract, under the provisions of Income Tax Act 1961 or any amendment thereof and under the Companies (profit) Surtax Act 1964 or any amendment thereof on account of payments received by it from the Company for work done under the Contract. It shall be the responsibility of the Contractor to submit to the concerned Indian

> Authorities the returns and all other connected documents required for this purpose. The Contractor shall also provide the company such information as it may require in regard to the Contractor's income and expenditure under the Contract for proper assessment of taxes and duties. Any taxes levied on the personnel of Contractor shall also be borne by Contractor.
>
> The Company will if so required by applicable laws in force, at the time of payment deduct income taxes payable by the Contractor at the rates in force, from the amount due to the Contractor and pay to the concerned tax authority directly."(emphasis supplied)

Reading of the above clause in the contract shows that liability to pay taxes under the Indian Laws was that of the contractor and when the respondent O.N.G.C. was making payment of the tax to the Income Tax Department, it was making payment on behalf of the contractor. The tax liability with which these appeals are concerned, was under the Companies (Profits) Surtax Act,1964. Perusal of Section 18 of

that Act shows that the provisions of Section 160, 161, 162 of the Income Tax Act have been made applicable. Perusal of Section 160, 161 and 162 of the Income Tax Act shows that so far as the tax liability of the foreign contractor is concerned, the respondent was a representative assessee and it was acting on behalf of the foreign assessee to clear the liability of the foreign assessee under the Companies (Profits) Surtax Act. It is an admitted position that under the terms of the contract payment was to be made by the respondent to the contractor in foreign currency by crediting the amount in the account of the contractor in a Bank at New York. From the above quoted clause in the contract it is clear that for making payment of the surtax on behalf of the contractor, the O.N.G.C. was authorised to deduct such amount as may be necessary from the amount payable to the contractor. For deciding how much amount is to be deducted from the amount payable to the contractor, for clearing the surtax liability of the contractor, the rate of exchange that may be prevalent on that date is to be applied. It is an admitted position that when amounts for the aforesaid

purpose were deducted in 1987, the rate of exchange prevalent at that time was applied. If the respondent had immediately on making the deduction, paid the amount to the Tax authority in the year 1987 itself, no dispute would have arisen. But the respondent retained the amount for a period of three years and paid the tax in the year 1990, during that period there was variation in the rate of exchange as a result of which lesser number of dollars were required to be paid for clearing the tax liability of the contractor, therefore, the dispute arose, the contractor claims that it is entitled to refund of the amount from O.N.G.C. The learned Umpire and the learned Arbitrators have construed the terms of the contract as also the law in force and have held that the contractor is entitled to refund. The amount was deducted as observed above from the amount payable to the contractor in dollars. The amount was held by O.N.G.C. as agent of the contractor for clearing the surtax liability of the contractor. We have not been pointed out anything which will even suggest that there was any law in force which prevented the O.N.G.C. from holding the amount deducted from the

amount payable to the contractor in U.S. Dollars and that it was compulsory for the O.N.G.C. to convert the dollars into Rupees and hold the amount in Indian currency. In our opinion, as the O.N.G.C. was holding the amount as agent, considering that that fluctuation in the exchange rate was in favour of Dollar, the O.N.G.C. should have continued to hold the amount in Dollar as that course of action was favourable to its principal i.e. the contractor. The learned Umpire in his award has discussed this issue in detail, he has recorded his finding on the issue thus:-

> “It is, however, difficult to accept the contention raised on behalf of ONGC that MI was not entitled to ask for refund of the balance in terms of U.S.Dollars. It is obvious that MI had nothing to do with the fact that NGC was maintaining their accounts in terms of Indian Rupees. The Contract between ONGC and MII is to pay the contract price to MII in terms of U.S.Dollars. It is an expressly stipulated in Clause 13.1 of the contract. The invoices were submitted by MII in U.S.Dollars.

The payment of the invoices is also to be made by ONGC in U.S.Dollars. Admittedly, the original deduction made was also to the extent of US$ 432,500.00. It is true that the tax demanded from ONGC on account of MII would be payable in Indian Rupees. At the same time it must be appreciated that the liability which ONGC owed to MI was not in terms of Indian Rupees and MII is entitled to proceed on the assumption that an amount of US$ 432,500.00 is lying with ONGC as having been deducted out of the total amount which was admittedly payable in foreign currency, namely, U.S.Dollars. If the deduction would not have been made by ONGC, there can be no doubt that the said amount of U.S.Dollars would have been required to be made by ONGC to MII. Just because the amount which was immediately payable in U.S.Dollars is paid late, whatever be the reason, the nature of the liability to pay back the deducted amount in U.S.Dollars does not change into a liability to pay in Rupees. The legal position is that whatever be the nature of the account which is maintained by ONGC and, indeed, it could not have maintained

its own accounts in foreign currency, the liability to pay MII any amount due on the basis of its invoices continued to be to pay in terms of U.S.Dollars. The amount deducted in terms of U.S.Dollars being the deposit with ONGC, that amount of U.S.Dollars which would be enough to meet the tax liability in terms of Rupees as on the date on which money was paid to meet the demand of the Tax Department could alone be debited to the account of MII. The rate of exchange at which the conversion of the tax liability in Rupees into U.S.Dollars would be the rate which was prevalent on 21st of May,1990. As a consequence, the balance due out of the deduction made from the Invoices would have to be refunded to MII in terms of Dollars. Even the officers of ONGC had understood that the liability of ONGC would be to refund the deducted amount in U.S.Dollars as well be clear from the letters written by G.Balasubramaniam referred to earlier. Consequently, MI will be entitled to the refund of US $ 100733.89 with interest thereon with effect from 21st May 1990. Accordingly, the alternate

claim made by MI is granted."

It is clear that according to the learned Umpire the amounts to the contractor were payable under the terms of the contract in Dollars, the amount was also deducted in dollars, the rate of exchange prevalent on the date of deduction was relevant only for the purpose of deciding how many dollars, considering that the tax liability would be in Indian Currency, are to be deducted. Perusal of the judgment of the learned Single Judge in Arbitration Petition no.233 of 1995 shows that he has set aside the above finding recorded by the learned Umpire because, according to the learned Judge, on the date on which deduction is made by the O.N.G.C., credit was given of that amount to the contractor in the account book of the O.N.G.C. Observations in para.10 of the judgment of the learned Judge read as under:-

> "10. After considering the respective contentions of the parties and submissions made by the learned Counsel for the parties and the award impugned, it appears to me that the award suffers

from a manifest error apparent ex-facie as far as claim no.9 is concerned. It is the finding of the Umpire that the Income Tax department treated the petitioner as representative assessee under Section 162 of the Income Tax Act for the assessment year 1986-87 and the deduction was legal and not uncalled for. Thus, the assessment against the petitioner was in its capacity as a representative assessee. As held by the Umpire the petitioner did not want to retain the monies beyond the period necessary. However, the petitioner was directed by the Income Tax department not to refund but to retain the amount of surtax on the basis of computation under Section 44-B of the Income Tax Act. The petitioner was directed to deposit the amount retained by it of surtax and informed that the amount was required to be paid pursuant to the notice under Section 226(3) of the Income Tax Act. It is thus clear that the money retained in rupees in 1987 towards tax liability of the respondent was credited in the account of the respondent in the books of accounts of the petitioner in rupees. In law the effect is that the petitioner had paid

> the amount to the respondent till 1987 as the money was held by it as a depositee.”

Perusal of the above quoted paragraph shows that according to the learned Single Judge, deduction of the amount from the amounts payable to the contractor, amounts to payment of the money to the contractor and thereafter, the money is held by O.N.G.C. as a depositee. We find, ourselves unable to agree with the view. The amount which is payable as tax by the contractor is deducted by O.N.G.C, to make payment of that amount to the tax authority as agent of the contractor. The money is thus held by O.N.G.C. as agent of the contractor till payment is made to the tax authority.. Perusal of both the judgments impugned in the appeals shows that both the learned Single Judges have heavily relied on the judgment of the Supreme Court in the case of “P.V.Raghava Reddi and another vs. Commissioner of Income Tax, AIR 1962 Supreme Court 977” referred to above. Perusal of that judgment shows that the appellant before the Supreme Court, had sold MICA to

a Japanese company. During that time there were difficulties in remitting the amount to the Japanese company, and therefore, following clause was included in agreement:-

> “In view of the difficulties in this country, it is requested that the first party credits all these amounts to the account of the second party with them without remitting the same until definite instructions are received by the first party.”

The question that fell for consideration before the Supreme Court was whether the amounts that were payable to the Japanese company were received by the Japanese Company in India. In paragraph 9 the Supreme Court relying on the above quoted clause in the agreement held that till the Indian firm credited the amount that was payable to the Japanese company in their books of account to the credit of the Japanese company, the Indian Company was debtor of the Japanese company, but after the amounts were credited the money was held by assessee firm as depositee and the money then belongs to the Japanese company and

was held for and on behalf of the Japanese company and the money was at the disposal of the Japanese company. The following observations in paragraph (9) of the judgment are relevant, they read as under:-

> “9. This leaves over the question which was earnestly argued, namely, whether the amounts in the two account years can be said to be received by the Japanese Company in the taxable territories. The argument is that the money was not actually received, but the assessee firm was a debtor in respect of that amount and unless the entry can be deemed to be a payment or receipt, cl (a) cannot apply. We need not consider the fiction for it is not necessary to go to the fiction at all. The agreement, from which we have quoted the relevant term, provided that the Japanese Company desired that the assessee firm should open an account in the name of the Japanese Company in their books of account, credit the amounts in that account, and deal with those amounts according to the instructions of the Japanese company. Till the money was so credited, there might be a relation of debtor and

> creditor; but after the amounts were credited, the money was held by the assessee firm as a depositee. The money then belonged to the Japanese Company and was held for and on behalf of the Company and was at its disposal. The character of the money changed from a debt to a deposit in much the same way as if it was credited in a Bank to account of the company. Thus, the amount must be held on the terms of the agreement, to have been received by the Japanese Company, and this attracts the application of S.4(1)(a). Indeed, the Japanese Company did dispose of a part of those amounts by instructing the assessee firm that they be applied in a particular way. In our opinion, the High Court was right in answering the question against the assessee."

It is thus clear that the Supreme Court has decided the question that fell for consideration before it on the basis of the above quoted clause in the contract between the parties. In so far as the present case is concerned, there is no such clause in the contract. Therefore, really speaking, the ratio of the judgment of the Supreme Court in the case "P.V.Raghava Reddi

and another vs. Commissioner of Income Tax" is not applicable in the present case.. In our opinion, in any case, the view that was taken by the Umpire as also by the Arbitrators was based on the interpretation on the terms of the contract and was a possible view of the terms of the contract as also of the Law and therefore, the learned Single Judge has not justified in disturbing that. Therefore, in our opinion, appeal no.560 of 1999 deserves to be allowed, because this is the only point which was raised in that appeal.

4. So far as two other points that are required to be considered in appeal no.226 of 2000 are concerned, the first question to be considered is whether the Arbitrators were justified in awarding interest on the undisputed claims. The relevant facts are that invoices were submitted by the contractor for payment. The respondent did not raise any objection to some of the payment which were claimed under the invoices but did not actually make the payment. The payment of some of the amounts was made even before the arbitration commenced. The payment

of some of the amounts was made after the arbitration commenced. The learned Arbitrators have held that because the objection or dispute was not raised after receiving the invoices by the respondent by following the procedure which is laid down in the contract, the claim amounts were undisputed and therefore, the appellant was entitled to interest in terms of the contract. The learned Single Judge, however, set aside the Award made by the learned Arbitrator on this count holding that the conduct of the O.N.G.C. of not making payment amounts to raising dispute and as there was dispute raised by non-payment, no interest could have been awarded on these amounts because the contract is only for payment of interest on undisputed claims and therefore, payment of interest on disputed claim is barred by implication. In our opinion, clause nos.13.2.1 to 13.2.4 are relevant. They read as under:-

> 13.2.1 Pending completion of the whole works, provisional progress payments for the part of Works executed by the Contractor shall be made by the Company on the basis of the said Work completed by the Contractor as

certified by the Company Representative and approved by the Company for payment.

13.2.2 The Contractor shall prepare six copies of invoice with all the required supporting documents and details and submit the said invoice to the Company Representative at Company's Bombay address for certification of the said work in the above invoice and for approval of the amount payable thereunder.

13.2.3 The Company shall arrange certification and approval of the invoice for payments to be completed within 30 days of receipt thereof by the Company Representative. In the event of the Company Representative objecting to any portion of the Work covered by the said invoice, such objection shall be communicated to the Contractor within 20 days of the date of receipt of the invoice by the Company Representative. The Contractor shall have the right to claim the payment of such amounts objected by the Company Representative in subsequent invoice after removal of cause of such

objection.

13.2.4 The Company shall arrange the remittance to the Contractor of the undisputed amount of all the work within 30 days of the receipt of the invoice by the Company Representative for the Scope of work as at the time of award of the contract. In the event that payment of the undisputed amounts of the invoices is not received, within forty-five (45) days of receipt of the invoice by the Company, interest shall accrue beginning on the forty sixth day after receipt of invoice on the undisputed amount due at the rate of one (1) percent per month."

Perusal of the above quoted clauses shows that on receiving the invoices if the respondent desires to raise any dispute about any of the items included in the invoice, objection has to be raised within 20 days from the date of receipt of the invoice and payment of balance of the amount has to be arranged within a period of 30 days from the date of receipt of the invoice. If the payment is not made within that period, then the contractor becomes entitled to

payment of interest. In the present case, it is an admitted position that no objection as contemplated by the above quoted terms of the contract was raised in relation to any of the invoices by the respondent within the period specified in the contract, and therefore, in our opinion, the learned Arbitrators were justified in holding that the claims on which the interest was to be paid were undisputed claims, and therefore, the contractor was entitled to claim interest on those amounts in terms of the contract. In our opinion, the learned Single Judge was not justified in holding that because the payment was withheld, the invoices were disputed, and therefore, interest is not payable. The finding recorded by the learned Arbitrator was in any case is the finding recorded on interpretation of the terms of the contract. The finding was within the jurisdiction of the learned Arbitrators and therefore, in our opinion, the learned Single Judge was not justified in disturbing that finding.

5. The last point that arises for consideration in the appeal no.226 of 2000 is whether the

Arbitrators were justified in awarding full payment of US $ 2,43,000 for both mobilization and demobilization. The contractor made a claim of US $483742 under the head “lumpsum amount”. Under the contract if the barge of the contractor is mobilised outside India for carrying out the work of O.N.G.C. then lumpsum amount of US $243000 is payable for mobilization. It was the case of the contractor that for carrying out work of O.N.G.C. in question, the barge was mobilised at U.A.E. and therefore, the contractor is entitled to full lumpsum payment. The defence of the ONGC was that some other work of similar nature was taken by the contractor as a sub-contract which was nearby to the site where the work to which the contract in question relates was to be carried out, and therefore, in terms of clause 24.5 the contractor was not entitled to claim full lumpsum amount for mobilization. This case of the contractor was accepted by the Arbitrators. The Arbitrators held that the barge of the contractor was mobilized at U.A.E. though it is true that before reaching the site to which the contract in question relates, the barge did work at other site which was nearby, as the

mobilization of the barge was took place at U.A.E. the contractor is entitled to full lumpsum payment. The learned Single Judge has set aside this finding and has also set aside the Award made by the Arbitrators on this count. We have heard the learned Counsel appearing for both the sides in detail in this regard. In our opinion, in view of the clear language of clause 24.5, the Arbitrators were not justified in awarding full lumpsum payment for mobilization. Clause 24.5 reads as under:-

> "24.5 In the event that Contractor obtains other work in the nearby area or Contractor elects to mobilize his equipment from some point less distant from Company's site in offshore than the point of origin, the lumpsum amount for mobilization shall be reduced in the rates that the reduced distance from the new point of mobilization bears to the distance from the point of origin."

Perusal of the above quoted clause 24.5 shows that if the contractor obtains other work in the nearby area

then the lumpsum amount for mobilization is to be reduced. It is an admitted position that the contractor had obtained on sub-contract other work in the nearby area. It appears that the Arbitrators fell in error because they failed to notice that reduction in lumpsum amount for mobilization is contemplated by clause 24.5 in two contingencies viz. (1) when contractor obtains other work in the nearby area, (2) the contractor elects to mobilise the equipments from some point less in distance from the company's site in off shore than the point of origin. The Arbitrators read clause 24.5 to mean that both the conditions should simultaneously be complied with for reduction in lumpsum payment. In our opinion, reduction in lumpsum amount of mobilization will take place even when the barge is mobilised at the point of origin, but if the contractor has taken other work in the nearby area. Therefore, we do not find any fault with the finding recorded by the learned Single Judge that for mobilization the Arbitrators were not justified in awarding full lumpsum payment.

6. So far as the claim made by the contractor for lumpsum amount under the contract i.e. US $243000 for demobilization is concerned, perusal of the judgment of the learned Single Judge shows that he has held that because the contractor is not entitled to full lumpsum payment for mobilization, the contractor is not entitled to claim full lumpsum payment for demobilization also. In our opinion, the conclusion reached by the learned Single Judge is contrary to the record and clause 24(4) of the contract. Clause 24(4) reads as under:-

> “24.4 In the event that the Contractor obtains other work in the nearby area, or Contractor elects to demobilize his equipment to some point less distant from Company's site in offshore than the point of origin the lump sum amount for demobilization shall be reduced in the ratio that the reduced distance to the new point of mobilization bears to the distance to the point of origin.”

Perusal of the above quoted clause 24.4 shows that if

after completing the work for which the barge was mobilised, the barge was demobilised at some place other than the point of origin, then the lumpsum amount payable for demobilization can be reduced. It is nobody's case that after completing the work at the site of ONGC, the barge went for doing any other work. It appears to be an accepted position on record that the barge was taken to U.A.E. for demobilization from O.N.G.C. site to which the contract in question relates. U.A.E. was the point of origin, and therefore, as the barge for the purpose of demobilization was taken to U.A.E. And not to any other work site, in terms of clause 24.4 the contractor would be entitled to full lumpsum payment provided in the contract for demobilization. In our opinion, the learned Arbitrators were justified in holding that the contractor is entitled to full lumpsum payment of US $ 243000 for demobilization under the contract. The order of the learned Single Judge to that extent is therefore, liable to be set aside.

7. In the result, therefore, appeal no.560 of 1999 succeeds entirely. The judgment and the order impugned in that appeal are set aside. The Award made by the learned Umpire in relation to surtax is also made rule of the Court.

So far as the appeal no.226 of 2000 is concerned, the order of the learned Single Judge setting aside the Award in relation to the surtax, demobilization and the interest is set aside. The award made by the learned Arbitrators in relation to surtax, demobilization and the interest is confirmed. In other words, the order of the learned Single Judge setting aside the Award in relation to the mobilization of the barge is maintained and therefore, the Award of the learned Arbitrators is made rule of the Court except the amount awarded on account of mobilization. If any interest is awarded on the amount awarded for mobilization, obviously that interest will also stand reduced.

There is cross objection in the appeal

no.560 of 1999. The cross objection is that before the learned Single Judge, points other than the point of surtax were also urged. The learned Single Judge has clearly observed in the order that the only point urged was in relation to surtax. If according to the respondent, points other than the point of surtax were also urged and the observation of the learned Single Judge was not correct, in that event the respondent's remedy was to approach the learned Single Judge. The cross objections in appeal, therefore, cannot be entertained and therefore, it is disposed of.

It is common ground that some amounts were deposited by the ONGC in the Court which was permitted to be withdrawn by the contractor pursuant to the Court's order. If, as a result of this order, according to the respondent, the contractor is liable to bring back any amount that he has withdrawn from the Court, the O.N.G.C. shall be at liberty to take out notice of motion in this appeal seeking orders of the Court for brining back the amount.

Appeals are disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)